

DECLARATION OF EMERGENCY

Office of the Governor Board of Pardons and Committee on Parole

Parole Eligibility and Types (LAC 22:XI.304)

The Board of Pardons, Committee on Parole, has exercised the emergency provision in accordance with R.S. 49:953(B)(1), the Administrative Procedure Act to adopt LAC 22:XI. 304, Parole Consideration for Youth Offenders. This Emergency Rule, effective July 12, 2016, will remain in effect for a period of 120 days, unless renewed by the Chairman of the Board of Pardons or until permanent rules are promulgated in accordance with law.

This Rule provides with respect to the United States Supreme Court decision in *Miller v. Alabama* in which held that the “Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” Act 239 of the 2013 Regular Legislative Session was passed in response to the United States Supreme Court decision in *Miller v. Alabama*. Act 239 applies prospectively for offenders who were sentenced to life imprisonment (without parole eligibility) for a conviction for first or second-degree murder. In January 2016, the United States Supreme Court rendered its decision in *Montgomery v. Louisiana* and determined that the *Miller* decision must also be applied retroactively; however, in Louisiana no section of the revised statutes is retroactive unless that is expressly stated (R.S. 1:2). This action is necessary because the legislative measure that was presented in the 2016 Regular Legislative Session (House Bill 264) to address the retroactivity issue in these cases failed to pass in the final moments of the session.

This Rule provides guidelines for the Committee on Parole for parole consideration for juvenile offenders sentenced to life imprisonment prior to Act 239 of 2013. These guidelines are not intended to imply or guarantee eventual freedom, but to provide meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation as mandated by *Miller*.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XI. Committee on Parole

Chapter 3. Parole—Eligibility and Types

§304. Parole Consideration for Youth Offenders

A. Once a judicial determination is rendered removing the parole restriction, a person sentenced to life imprisonment for a homicide committed when the offender was under the age of 18 and who was sentenced prior to Act 239 of 2013 may be considered for parole once all of the following conditions are met.

1. The offender has served 35 years of the sentence imposed.
2. The offender has not had any major (Schedule B) disciplinary offenses in the twelve consecutive months prior to the parole hearing.
3. The offender has completed 100 hours of prerelease programming in accordance with R.S. 15:827.1.
4. The offender has completed substance abuse programming as applicable.

5. The offender has obtained a High School Equivalency (HSE) certification, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a HSE certification due to a learning disability. If the offender is deemed incapable of obtaining a HSE certification, the offender must have completed at least one of the following:

- a. a literacy program;
- b. an adult basic education program; or
- c. a job skills training program.

6. The offender has obtained a low-risk level designation by a validated risk assessment instrument approved by the Secretary of the Louisiana Department of Public Safety and Corrections.

B. For each offender eligible for parole consideration, the parole panel shall give great weight to the fact that youth are deemed to be less responsible than adults for their actions. At a minimum the parole panel shall consider mitigating factors for offenders sentenced before the age of 18, including, but not limited to:

1. the age and life circumstances of the offender as of the date of the commission of the crime;
2. the hallmark features of youth at the time of commission of the crime, including but not limited to, diminished understanding or risks and consequences, diminished ability to resist peer pressure, and diminished ability to control surroundings;
3. whether the offender has demonstrated remorse, growth, and increased maturity since the date of the commission of the crime;
4. the offender’s contributions to the welfare of other persons through service;
5. when appropriate, the offender’s efforts to overcome substance abuse, addiction, or trauma;
6. lack of education or obstacles that the offender may have faced as an adolescent in the adult correctional system;
7. the overall degree of the offender’s rehabilitation considering the offender’s age and life circumstances at the time of the crime, the nature of circumstances of the offender’s involvement in the crime, and the offender’s opportunities for rehabilitation while incarcerated.

C. The parole panel shall consider a current mental health evaluation of the offender regarding the offender’s background and current functioning, especially in regards to factors identified by the United States Supreme Court in *Miller v. Alabama* as important considerations in the sentencing of adolescents.

D. To deny parole, the parole panel must determine that the need for continued incarceration of the offender outweighs the benefits to the offender and society that would result from the offender’s release to the community.

E. Each parole panel member must articulate the basis of their individual decision both orally and in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons and Committee on Parole, LR 42:

Sheryl M. Ranatza
Board Chair

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